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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/910,544
Filing Date: July 20, 2001
Appellant(s): AYALA ET AL.

Marisa J. Dubue
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 9, 2006 appealing from the Office action mailed June 17, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

Claims 14-25 and 39-50 are withdrawn from consideration as not directed to the elected invention.

Claims 1-13 and 26-38 have been canceled.

This appeal involves rejected claims 51-69.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

Appellant's brief presents arguments relating to the entry of the Appellant's After Final Amendment of September 7, 2005. This issue relates to petitionable subject matter under 37 CFR 1.181 and not to appealable subject matter. See MPEP § 1002 and § 1201.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2002/0194057

LIDOW

6-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 54-69, 51 and 52 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably

convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

New claims 54 and 62 recite that the supplier capability statements are received by "enterprise sites" and are forwarded by the sites. As understood by the examiner, the original disclosure does not show the statements being sent to a plurality of enterprise sites, and being forwarded by the plurality of enterprise sites. (see e.g., Spec. p.12, lines 12-19).

New claims 54 and 62 recite that a constrained forecast is generated which is "specific to each of the enterprise sites". However, as understood by the examiner, the original disclosure does not show this feature. As understood by the examiner, the specification contemplates a forecast perhaps specific to a group which may be distributed over several sites, but does not appear to contemplate breaking it down further to each site (see e.g., pgs. 11-13).

New claims 56 and 64 recite that the unconstrained forecast is made "for each enterprise site". However, as understood by the examiner, the original disclosure does not show this feature. It appears that the unconstrained forecast is made for the group as a whole (e.g., p.12, lines 1-10).

New claims 58 and 66 recite that the capability statements include the greatest amount of material each supplier can make "available to corresponding enterprise sites". (It is noted that "corresponding enterprise sites" is assumed to refer back to the "each of the enterprise sites" recited in claim 54.) However, as understood by the

examiner, the original disclosure does not show this feature. They do not appear to be made to this degree of detail.

The original disclosure does not disclose the above-mentioned claimed features so that one of ordinary skill in the art would understand that the inventor had possession of them at the time of application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 51-69 are rejected under 35 U.S.C. 103(a) as being obvious over Lidow (2003/0194057).

As to claims 54 and 62, Lidow shows aggregating demand received by an enterprise server, from enterprise site (comprising customers associated with the enterprise), the demand comprising materials requirements from each site (see e.g., par. 0018, lines 1-5; Fig. 6, 100; par 0160); generating an unconstrained forecast from the aggregating (comprising summing the demand forecasts from the customers as in par. 0018, lines 5-8; Fig. 7, 138); transmitting the unconstrained forecasts to the suppliers (e.g., par. 0018, 8-11; par. 0019, 1-3; Fig. 6, 116, 118; Fig. 7, 142, Fig. 8, 154); receiving supplier capability statements from the from the suppliers (par. 0019, suppliers reply in lines 1-6; Fig. 7, 142; par. 0165, lines 13-18; Fig. 8, 154; par. 0166,

lines 14-20); generating a constrained forecast (par. 0019, lines 6-7 – customers change their demand forecast; Fig. 6, 120; Fig. 8, 158; par. 0167, lines 7-11 –a new demand forecast created which is constrained by supplier capabilities); and transmitting the constrained forecast to the suppliers. Lidow does not show that the received supplier capability statements are forwarded by the enterprise site. However, forwarding a supplier capability statement is notoriously old and well known in the art. It would have been obvious to one of ordinary skill of the art to modify the method of Lidow by having the supplier capability statements forwarded by the enterprise site in order to keep the group “in the loop” regarding supplier status.

Alternatively, as to claims 54 and 62 Lidow shows aggregating demand received by an enterprise server, from enterprise site (comprising customers associated with the enterprise), the demand comprising materials requirements from each site (see e.g., par. 0018, lines 1-5); generating an unconstrained forecast from the aggregating (comprising summing the demand forecasts from the customers as in par. 0018, lines 5-8); transmitting the unconstrained forecasts to the suppliers (e.g., par. 0018, 8-11; par. 0019, 1-3); receiving supplier capability statements from the from the suppliers; generating a constrained forecast; and transmitting the constrained forecast to the suppliers. Lidow does not show that the received supplier capability statements are forwarded by the enterprise site. However, it would have been an obvious matter of design choice to have the suppliers send it to the enterprise site and then have it forwarded, since the specification does not state that this particular method of

transmission is for a particular purpose or solves any particular problem, and it appears that the method would function equally well either way.

As to claim 51, Lidow does not explicitly show providing a formal commitment to produce the supply. However, to do so is notoriously old and well known in the art. It would have been obvious to one of ordinary skill in the art to further modify the method of Lidow by providing a formal commitment in order to provide evidence of a meeting of the minds and to clarify communications.

As to claims 52, 55, 57, 63, and 65, it is noted that Lidow shows all elements.

As to claims 59-61, and 67-69, Lidow shows all elements except using a constraint based optimization tool running a squared set analysis; producing a squared set build plan; and inputting the build plan into an MRP tool. However, to do so is notoriously old and well known in the art. It would have been obvious to one of ordinary skill in the art to further modify the method of Lidow by using a constraint based optimization tool running a squared set analysis; producing a squared set build plan; and inputting the build plan into an MRP tool in order to produce a material needs forecast.

As to claim 53, Lidow shows all elements except using an MRP system to generate the forecasts. However, it is notoriously old and well known in the art to do so. It would have been obvious to one of ordinary skill in the arts to modify the method of Lidow by using an MRP system to generate the forecasts in order to provide for more efficient use of resources.

(10) Response to Argument

The 35 U.S.C. 112 1st New Matter Rejection of Claims 51, 52, and 54-69 is Proper

It is noted that the new matter rejection is proper, and that the Appellant has not argued that the rejection is improper.

Rather, the Appellant only argues that the Amendment After Final should have been entered, which is a petitionable matter and is not appealable.

The 35 U.S.C. 103(a) rejection of Claims 51-69 is Proper

Applicant argues that independent claims 54 and 62 are improperly rejected because:

1) Lidow does not show a “collaboration process implemented between a single enterprise and its suppliers” (Appeal Brief, pg. 7, second full paragraph);

2) Lidow “does not teach or make obvious the two-phased collaboration process” in the claims, but shows only a single phased process (Appeal Brief, pg. 7, third full paragraph); and

3) Lidow “does not teach or suggest a collaboration process that include direct transmissions between the supplier and the customer” (Appeal Brief, pg. 8, first full paragraph).

Regarding the above arguments, the examiner respectfully disagrees.

1) Lidow shows a collaboration process involving the enterprise elements, as claimed in claims 54 and 62

First, the Appellant argues that the Lidow rejection is improper because Lidow does not show a collaboration process implemented between a single enterprise and its suppliers. The examiner respectfully disagrees.

Contrary to Appellants arguments, claims 54 and 62 do not recite a process between “a single enterprise and its suppliers”. Claim 54 recites:

A method for facilitating supply chain collaboration over a network, the supply chain including an enterprise, enterprise sites, and at least one supplier, the method comprising:

Aggregating demand received, by a server of the enterprise, from enterprise sites associated with the enterprise ...

As claimed, Lidow is only required to show an enterprise and enterprise sites which are associated with the enterprise. The claims do not recite that the enterprise and enterprise site are of a single entity, as is argued by Appellant.

Lidow shows, and the rejection recites, an enterprise comprising the operator of the supply chain server 74, and enterprise sites, comprising the customer sites 72. The enterprise and the enterprise sites are associated via their relationship in the supply chain (see Fig. 6).

2) Lidow shows a two phase collaboration, as claimed in claims 54 and 62

Applicant argues that the Lidow rejection is improper because Lidow does not teach or make obvious the two-phased collaboration process in the claims, but shows only a single phased process. The examiner respectfully disagrees.

Lidow states that “the [supply chain] server receives forecasts form the customers detailing the orders that the customers desire” (par. 0018). Support for this step is also shown in Figure 6, data flow 100, and paragraphs. 0152 and 0160.

After receiving the forecasts, they are “consolidated, translated into supplier part numbers, and transformed into specific supplier requirements.” (par. 0152). Support for this step is further shown in Figure 6, activity 112 and Fig. 7, steps 130, 134, 136 and 138, and paragraphs 0163 - 0165.

These consolidated forecasts for specific supplier requirements are the unconstrained forecasts. The examiner notes that while Lidow states that the forecasts from the customers are validated (“analyzed by the supply chain server to ensure that they conform to contractual agreements and do not contain errors” – par. 0018), they are not constrained in the context of this process. The claimed process, and the process of Lidow deal with providing unconstrained forecasts, checking the capability of the suppliers to provide the requested items, and providing constrained forecasts based on the capability of the suppliers to provide the requested items.

The consolidated unconstrained forecasts are then transmitted to the suppliers in order to determine whether the forecast demand is greater than the supplier's capacity.

Lidow states, “[the] supply chain server queries whether the aggregated customer demand is greater than the supplier capacity. Supplier capacity may be determined from data supplied by the suppliers to the server or by suppliers allowing access to their respective databases” (par. 0165). Further support is shown for this step by Lidow’s statement that “the forecasts are also used to warn the suppliers of future demands” (par. 0018). This step is further shown in Fig. 7 at 142. Upon the determination that demand is greater than supply, the Lidow begins the “constrained supply planning routine” (par.0166) shown in Fig. 8.

If demand cannot be successfully redistributed and it is determined that demand is still greater than supply, intervention with the suppliers occurs (Fig. 8, step 154, par. 0166). It is noted that the content of the forecasts is further communicated to the suppliers in this step.

Upon a further determination that demand is greater than supply, the “supply chain server communicates with customers to ascertain any possible customer flexibility (e.g., part substitutions, early or postponed delivery) to thereby produce a new customer demand”. (par. 0167). This new customer demand provides the constrained forecast since it is the result of and is constrained by the capability of the supplier to provide the part. Further support for this step is provided in Figure 6, data flow 120, Figure 8, step 158, and paragraph 0019, lines 6 and 7.

After the resolution of the supply issues, “the customers’ demands are sent to the suppliers in groups so that the suppliers ...” (par. 0019).

In summary, Lidow shows the two step process recited in the claims and argued by the Appellant, providing an unconstrained forecast, and in response to the supplier's capability statement, a constrained forecast.

3) The Lidow Rejection shows direct transmission between the Supplier and the Customer, as claimed in claims 54 and 62

The Appellant argues that the Lidow rejection is improper because Lidow does not teach or suggest a collaboration process that includes direct transmissions between the supplier and the customer. The Examiner respectfully disagrees, and believes that Appellant's argument is a piecemeal attack on the rejection.

While the examiner concurs that the Lidow does not show direct transmission of data from the supplier to the customer, the alternative rejections of claims 54 and 62 recognize this and provide this element elsewhere.

The first alternative rejection notes that it is old and well known to provide such information via direct transmission and provides motivation for the making such a modification.

The second alternative rejection states that such a modification would have been a matter of obvious design choice.

It is noted that the Appellant has not provided a timely traversal of these rejections. Rather, the Appellant has only argued that the element is not shown in the base reference.

The 35 U.S.C. 103(a) rejection of Claim 53 is Proper

Applicant argues that independent claims 53 is improperly rejected because:

1) Lidow “does not teach or make obvious the two-phased collaboration process” in the claims, but shows only a single phased process (Appeal Brief, pg. 8, third full paragraph); and

2) Lidow “does not teach the MRP system” (Appeal Brief, pg. 8, third full paragraph).

Regarding the arguments above, the Examiner respectfully disagrees.

1) Lidow shows a two phase collaboration, as claimed in claim 53.

As to the Examiner’s answer regarding the two phase collaboration, attention is drawn to the Examiner’s arguments above, showing that Lidow shows this element.

2) The Rejection over Lidow teaches an MRP system, as claimed in claim 53

The Appellant argues that the Lidow rejection is improper because Lidow does not teach an MRP system. The Examiner respectfully disagrees, and believes that Appellant’s argument is a piecemeal attack on the rejection.

While the examiner concurs that the Lidow does not explicitly state teach an MRP system, the rejection provides for this element elsewhere.

The rejection takes notice that it is old and well known to use an MRP system, and provides motivation for the modification.

It is noted that the Appellant has not provided a timely traversal of this rejection. Rather, the Appellant has only argued that the element is not shown in the base reference.

Summary

Since the 112 1st rejection of claims 51, 52 and 54-69 has been properly made and the Appellant has presented no evidence against the rejection, it is requested that the rejection be affirmed.

Since the 103 rejection over Lidow of claims 51, 52 and 54-69: 1) shows the enterprise and associated enterprise sites; 2) shows the claimed two-step collaboration process having both unconstrained and subsequent constrained forecasts; and 3) provides for the direct transmission of data from the suppliers to the customers, it is believed that the rejection is proper and it is requested that the rejection be affirmed.


Since the 103 rejection over Lidow of claim 53: 1) shows the claimed two-step collaboration process having both unconstrained and subsequent constrained forecasts; 2) provides for the use of an MRP system, it is believed that the rejection is proper and it is requested that the rejection be affirmed.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



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Conferees:


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